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FISCAL IMPACT STATEMENT

LS 6778

BILL NUMBER: HB 1114

NOTE PREPARED: Mar 2, 2006

BILL AMENDED: Mar 2, 2006

SUBJECT: Various Property Matters.

FIRST AUTHOR: Rep. Foley

FIRST SPONSOR: Sen. Steele

BILL STATUS: As Passed Senate

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) ***Title Insurance Policy Fee:*** The bill imposes a \$5 fee on a person that purchases a title insurance policy. The bill allows the insurer to retain \$2 and requires \$3 to be deposited in the Title Insurance Enforcement Fund.

Title Insurance Enforcement Fund: The bill authorizes the Budget Agency to augment the appropriations to the Department of Insurance from the Title Insurance Enforcement Fund.

Land Conveyance: The bill specifies the language sufficient to incorporate by reference a recorded covenant, restriction, easement, or other encumbrance in a conveyance of land.

Payment of Taxes and Special Assessments: The bill provides that an adverse possessor or claimant who wishes to establish title to land or real estate must pay the taxes and special assessments that the adverse possessor or claimant reasonably believes in good faith to be due on the land or real estate. (Current law requires the adverse possessor or claimant to pay the taxes and special assessments due on the land or real estate.)

Payment Processing Companies: The bill allows a county clerk to contract with a payment processing company. The bill allows a payment processing company to charge a transaction fee. The bill allows a county recorder to contract with a payment processing company. The bill allows a payment processing company to charge a transaction fee.

Social Security Redaction and Fee: This bill requires review and redaction of Social Security numbers in

documents filed with the county recorder (in addition to recorded documents.) The bill requires liens (other than federal liens) to have the Social Security numbers redacted from the lien before recording and filing. The bill reduces the standard for the redaction of Social Security numbers in recorded or filed documents from "to the extent possible" to "to the extent practicable and as permitted by law".

This bill adds a culpability standard for the Class A infraction that may be committed when recorded documents containing Social Security numbers are disclosed by the county recorder's office. The bill also provides that a county recorder shall charge a fee for recording a document. The bill provides the methods of payment that a county recorder may authorize that it may be paid with. The bill provides that a county recorder may collect a sum if it is charged a fee for the use of a financial instrument or credit card. The bill repeals the duty of an individual preparing a document for recording to affirm under perjury that the individual has reviewed the document and redacted each Social Security number in the document. The bill amends the affirmation regarding redacting a Social Security number that must be attached to a document that is recorded or filed.

Effective Date: Upon passage; January 1, 2006 (retroactive); July 1, 2006.

Explanation of State Expenditures:

Explanation of State Revenues: (Revised) ***Title Insurance Policy Fee:*** The Department of Insurance would retain \$3 of a proposed \$5 fee that would be assessed on consumers for each title insurance transaction made by an insurer. The \$3 fee would be deposited into the proposed Title Insurance Enforcement Fund.

(Revised) ***Title Insurance Enforcement Fund:*** This provision would establish the Title Insurance Enforcement Fund to provide supplemental funding for Department operations involving title insurance, and to provide staff to enforce title insurance matters. The State Budget Agency would be allowed to augment appropriations to the Department of Insurance from the balances of the proposed Title Insurance Enforcement Fund.

The Commissioner of Insurance would administer the Enforcement Fund. Policy fees (as described above), fines, monetary penalties, and costs for violation, other amounts required would be deposited into the Enforcement Fund. Any fund balances remaining at the end of a state fiscal year would not revert to the state General Fund.

Social Security Redaction and Fee: The bill adds culpability language to a Class A infraction for disclosing a Social Security number on a document without a prior search for and removal of the number using redacting technology. The provision could potentially reduce the number of persons convicted of committing a Class A infraction.

Penalty Provision: The maximum judgment for a Class A infraction is \$10,000, which would be deposited in the state General Fund.

Explanation of Local Expenditures: ***Social Security Redaction and Fee:*** Under current law, beginning January 1, 2008, county recorders will be responsible for searching documents for a Social Security number, redacting documents that contain the number, and recording certification that the individual reviewed the entire document and took reasonable care to redact the Social Security number. Current law also provides for county recorders to comply "to the extent possible."

This bill makes it so that county recorders comply "to the extent *practicable and as permitted by law*." This provision may somewhat mitigate costs associated with redacting records. However, the bill repeals the requirement that a document must be redacted and have the certification attached before it may be accepted by a county recorder. The provision could potentially increase the number of documents a county recorder must redact.

(Revised) ***Payment Processing Companies:*** This provision would allow both county clerks and recorders to contract with payment processing companies. Transaction fees would be allowed to be charged by the company to the person conducting a transaction with a clerk or recorder's office. Neither clerk nor recorder would be able to deposit any of the transaction fee. A clerk or recorder would only be allowed to deposit the payment amount of the transaction conducted as if they had collected that payment for the transaction without the means of a bank or credit card.

The impact to clerks and recorders would depend on the contract arrangements they were to make with a payment processing company.

Explanation of Local Revenues: Social Security Redaction and Fee: Current law (P.L. 91-2005) requires county recorders to place \$2 of a recording fee charged under IC 36-2-7-10 (including additional page, cross-referencing, deeds, fax machine transfers, and mortgage and real estate recordings) in the county's identification security protection fund, which is used by the county recorder to purchase, upgrade, implement, or maintain redacting technology.

The bill would specify a \$2 county identification security protection fee to be assessed for recording or filing a document in addition to any other fees allowed under IC 36-2-7-10. The fee would be deposited in the county's identification security protection fund.

With the establishment of a separate fee, this provision would increase recorder fee revenue to counties. However, with respect to county identification security protection funds, the impact of this provision should be neutral as current law requires \$2 of a fee under IC 36-2-7-10 to go into the account and the changes proposed by the bill would require the same amount to be deposited.

Recorder Payment Methods: Under the bill, county recorders could accept payment for transactions by cash, check, bank draft, money order, bank/credit card, electronic fund transfer, or by any other authorized financial instrument. Recorders would be allowed to charge a fee on transactions involving credit cards or bank transfers to cover the transaction costs for providing the service.

Penalty Provision: This provision could potentially reduce the number of people who could be convicted of committing a Class A infraction under current Social Security redaction law. Local governments receive revenue from court fees when court actions are filed and a judgment is entered.

State Agencies Affected: Department of Insurance; State Budget Agency.

Local Agencies Affected: County recorders, circuit court clerks, trial courts, local law enforcement agencies.

Information Sources:

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